

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAVID BRACK GATEWOOD,)
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 Plaintiff,)
)
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 v.) No. 4:04CV1109(JCH)
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)
DR. STEVEN CRAWFORD,)
)
)
 Defendant.)

ORDER

This matter is before the Court upon plaintiff's "motion for reconsideration" [Doc. #31]. Liberally construing the instant motion, plaintiff asks this Court to reconsider the assessment of the initial partial filing fee on appeal or, in the alternative, for an extension of time to pay it. Plaintiff contends that he is currently unable to pay the \$2.10 initial partial filing fee which this Court assessed towards the \$255 filing and docketing fees for plaintiff's appeal.

As noted in this Court's prior orders, a prisoner seeking leave to proceed in forma pauperis on appeal must pay the full \$255 filing and docketing fees, albeit these fees may be paid in installments. 28 U.S.C. § 1915(b)(1). The formula for calculating the amount of the initial partial filing fee is set forth in 28 U.S.C. § 1915(b)(1). The statute affords the Court no leeway to assess an initial partial filing fee that is less than the result obtained by application of the formula. The Court applied the statutory formula to the financial information

supplied by plaintiff and arrived at an initial partial filing fee of \$2.10. Therefore, plaintiff's motion to reconsider the assessment of the \$2.10 initial partial filing fee for his appeal will be denied.

The statute further directs the Court to collect the initial partial filing fee for his appeal "when funds exist." 28 U.S.C. § 1915(b)(1). To date, plaintiff has not paid any amount towards the initial partial filing fee on appeal despite being ordered by this Court to do so.¹ Plaintiff contends that this is because he has no funds with which to pay the initial partial filing fee on appeal. Defendant has not countered this allegation. Because it appears that funds do not currently exist to pay the initial partial filing fee on appeal, there is little to be gained by giving plaintiff additional time within which to pay it.

If plaintiff's financial condition changes and funds become available to pay the initial partial filing fee on appeal, then this Court assumes the defendant would bring this fact to the Court's attention (assuming that plaintiff would fail to do so). In the meantime, however, plaintiff is not prohibited from appealing a civil judgment "for the reason that [he] . . . has no

¹In a prior order, this Court erroneously credited (1) payments made towards the initial partial filing fee for the original complaint and (2) subsequent payments submitted by the Missouri Department of Corrections as monthly payments towards the remainder of the original \$150 filing fee towards the initial partial filing fee for the appeal.

assets and no means by which to pay the initial partial filing fee." 28 U.S.C. § 1915(b)(4).

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's "motion to reconsider" [Doc. #31] is **DENIED**.

Dated this 24th day of May, 2005.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE